No. 85-2089

In the Supreme Court of the United States

OCTOBER TERM, 1985

KIOWA TRIBE OF OKLAHOMA,
Petitioner,

vs.

ROBERT LEWIS and DIANA LEWIS,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner fails to raise any issue warranting review by the United States Supreme Court on writ of certiorari where the United States Court of Appeals for the Tenth Circuit properly applied the fundamental principles of *res judicata,* collateral estoppel, and 28 U.S.C. § 1738, consistent with prior decisions of this Court, to affirm the dismissal of petitioner's action.

2. Whether the United States Court of Appeals for the Tenth Circuit properly affirmed the dismissal of petitioner's action where petitioner had previously litigated the same issues and claims in the State Courts of Kansas, and failed to appeal the judgment of the final judgment of the Kansas Supreme Court.

3. Whether the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 *et seq.,* is an exception to 28 U.S.C. § 1738 or the jurisprudential precepts of *res judicata* and collateral estoppel so as to permit petitioner to relitigate in the federal courts issues which were previously fully determined in the State Courts of Kansas.

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OPINIONS AND JUDGMENTS DELIVERED BELOW

The United States District Court for the District of Kansas dismissed petitioner Kiowa Tribe of Oklahoma's action, Civil Action No. 83-1672, in an unreported bench ruling on October 28, 1983. (Petition for Writ of Certiorari, App. E.) The United States Court of Appeals for the Tenth Circuit affirmed the dismissal of the action in *Kiowa Tribe of Oklahoma v. Lewis*, 777 F.2d 587 (10th Cir. 1985). (Petition for Writ of Certiorari, App. A.)

The Kiowa Tribe's federal action is an attempt to attack collaterally the Kansas Supreme Court's decision in *In re Adoption of Baby Boy L.*, 231 Kan. 199, 643 P.2d 168 (1982), a copy of which was filed with the Court in conjunction with the Petition for Writ of Certiorari.

STATEMENT OF CASE

The following uncontroverted facts are reflected in the opinion of the Tenth Circuit and the 1982 opinion of the Kansas Supreme Court, *In re Adoption of Baby Boy L.*, 231 Kan. 199, 643 P.2d 168 (1982). Prior to the filing of the Complaint in this case by the Kiowa Tribe, the prior judicial proceedings in the Kansas courts were conducted by reference only to "Baby Boy L." in order to protect the identity of the child and mother as required by Kansas law. However, the identity of the parties is now a matter of record in the courts below and we shall therefore refer to the individuals by their proper names.

Seth Allan Lewis was born in Wichita, Kansas, on January 29, 1981. He was the out-of-wedlock child of Carmon Perciado and Ms. T.M.L. Carmon Perciado has

a Kiowa blood degree of five-eighths and is an enrolled member of the Kiowa Tribe. Ms. L is non-Indian. At the time of Seth's birth and continuing thereafter, Perciado was incarcerated at the Kansas State Industrial Reformatory. He never saw or had custody of the baby. On January 29, 1981, and again on April 14, 1981, Ms. L. executed a voluntary consent to the adoption of her baby. She expressly limited both consents to adoption only by the named prospective parents, respondents herein Robert and Diana Lewis. (*In re Baby Boy L.*, 231 Kan. at 201-02, 205, 212, 643 P.2d at 172-73, 174, 180.)

The petition for adoption and Ms. L.'s first consent were filed January 29, 1981, in the probate division of the Sedgwick County, Kansas District Court. The court granted Mr. and Mrs. Lewis temporary care and custody of Seth. Thus, since birth, the child, who is now five and one-half years old, has always lived with and been cared for by his parents, Robert and Diana Lewis. (*In re Baby Boy L.*, 231 Kan. at 201-02, 643 P.2d at 172-73.)

Notice of the adoption proceeding was served personally on Carmon Perciado at the Kansas State Industrial Reformatory. Perciado filed an affidavit of indigency and the court appointed counsel. On March 30, 1981, proceedings began in Sedgwick County District Court to determine the fitness of Perciado as a parent. The court was advised on April 1, 1981, that the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 *et seq.* (ICWA or Act) might apply. The Kansas trial court judge continued the proceeding so that notice could be given to petitioner herein, Kiowa Tribe of Oklahoma. (*In re Baby Boy L.*, 231 Kan. at 202, 643 P.2d at 172-73.)

The Kiowa Tribe filed a motion to intervene on May 8, 1981. On May 13, 1981, Ms. L. discovered that the

Kiowa Tribe intended to enroll Seth as a minor member of the Tribe. She objected to the enrollment in a letter received by the Tribe on May 15, 1981. Despite this, and without further notice to, or the presence of Ms. L. or Robert or Diana Lewis, the Kiowa Tribe unilaterally attempted to enroll Seth as a tribal member on May 16, 1981. (*In re Baby Boy L.*, 231 Kan. at 203, 643 P.2d at 173.)

Counsel for all interested parties, including the Kiowa Tribe, filed briefs with the Sedgwick County District Court on the applicability of the ICWA to the facts of the case. After examining the briefs and court file, the court denied the Tribe's motion to intervene on June 22, 1981, and held the ICWA was not applicable under the factual circumstances surrounding the birth of Seth Lewis. The court, however, permitted counsel for the Tribe to sit with and advise counsel for Carmon Perciado. (*In re Baby Boy L.*, 231 Kan. at 203, 643 P.2d at 173.)

On June 22, 1981, the Kiowa Tribe, by oral application, petitioned the United States District Court for the District of Kansas for a restraining order enjoining the state court from deciding the adoption of Seth Allan Lewis. The United States Court denied the restraining order and deferred to the jurisdiction of the Kansas state courts, and the Tribe did not appeal that decision. [*Kiowa Tribe of Oklahoma v. Lewis*, 777 F.2d 587, 592 n.5 (10th Cir. 1985). (Petition for Writ of Certiorari, App. A at App. 8 n.5.)]

Thereafter the Sedgwick County District Court found Carmon Perciado to be an unfit parent and severed his parental rights, in part due to his alcohol and/or drug abuse, his history of violence, and his criminal record.

(*In re Baby Boy L.*, 231 Kan. at 211-12, 643 P.2d at 173.) The Kiowa Tribe does not challenge the propriety of severing Perciado's rights in this action. (*See* Petition for Writ of Certiorari at i.)

The Sedgwick County District Court then proceeded with the adoption petition filed by Robert and Diana Lewis. The court found Ms. L.'s voluntary consent to adoption valid and Mr. and Mrs. Lewis suitable parents. The court therefore granted the adoption petition on June 24, 1981. (*In re Baby Boy L.*, 231 Kan. at 203, 643 P.2d at 173-74.)

The Kiowa Tribe, Carmon Perciado, and Perciado's parents appealed to the Kansas Supreme Court. Mr. Bertram E. Hirsch, counsel for petitioner herein, filed the Tribe's brief and personally appeared before the Kansas Supreme Court to argue the Tribe's position. The Kansas Supreme Court held that the ICWA does not apply to the facts of this case after making a detailed analysis of those facts in light of the stated purpose of the Act, *i.e.*, "the maintenance of the family and tribal relationships existing in Indian homes and to set minimal standards for the removal of Indian children from their existing Indian environment." (*In re Baby Boy L.*, 231 Kan. at 205-06, 643 P.2d at 175.) The Kansas Supreme Court held that the adoption of Seth could not and did not remove him from an existing Indian environment in that at the time of his adoption, Seth was almost five months old and always had lived with his adoptive parents, Robert and Diana Lewis; that his biological mother had expressly limited her consent to adoption by Mr. and Mrs. Lewis and made it clear she would retain custody if the Lewises were not granted the adoption; and, that Seth was never a member of an Indian family or community, nor did it appear he would ever become a member of such.

The Kansas Supreme Court therefore expressly held that under such circumstances the ICWA does not apply. (*In re Baby Boy L.*, 231 Kan. at 206-09, 643 P.2d at 175-77.) Counsel for the Kiowa Tribe did not even attempt a timely appeal of that judgment to this Court in 1982. The Tribe attempted to attack the Kansas Supreme Court judgment collaterally by filing an action against Mr. and Mrs. Lewis in the United States District Court for the Western District of Oklahoma on September 10, 1982. By order filed April 22, 1982, Judge Russell of the Western District of Oklahoma dismissed the Kiowa Tribe's action for lack of personal jurisdiction over the Lewises. [*See Kiowa Tribe of Oklahoma v. Lewis*, 777 F.2d at 590 n.1. (Petition for Writ of Certiorari, App. A at App. 3.)]

On July 5, 1983, the Kiowa Tribe again attempted a collateral attack on the judgment of the Kansas Supreme Court by filing this action in the United States District Court for the District of Kansas. It is virtually identical to the action it filed in the Oklahoma federal district court. Robert and Diana Lewis moved to dismiss the action as barred by *res judicata* and collateral estoppel. In an order and judgment entered October 28, 1983, Judge Kelly of the United States District Court for Kansas, granted the Lewises' motion to dismiss and held the action clearly was barred by the Kansas Supreme Court decision in *In re Baby Boy L.* The court also found the action was frivolous and useless and that Mr. and Mrs. Lewis were entitled to an award of costs and attorneys' fees. (Transcript of Bench Ruling; Petition for Writ of Certiorari, App. E at App. 28-29.)

The Tribe appealed to the United States Court of Appeals to the Tenth Circuit. The Tenth Circuit affirmed the district court and held the action was barred by the

Kansas state court proceedings and in light of decisions of the United States Supreme Court. The Tenth Circuit reversed, however, the award of costs and attorneys' fees. [*Kiowa Tribe of Oklahoma v. Lewis*, 777 F.2d at 593. (Petition for Writ of Certiorari, App. A at App. 11.)]

SUMMARY OF ARGUMENT

The Kiowa Tribe's petition for writ of certiorari should be denied because it raises no issues or claims warranting review by this Court. In affirming the dismissal of the Tribe's action against Mr. and Mrs. Lewis, the Tenth Circuit applied the fundamental principles of issue and claim preclusion as these principles are embodied in 28 U.S.C. § 1738. The court properly held that the Tribe's act of appealing a state trial court decision to the state supreme court barred the Tribe from collaterally attacking the state supreme court decision in an independent federal action. The court also properly found that the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 *et seq.*, does not create expressly or impliedly an exception to 28 U.S.C. § 1738.

ARGUMENT AND AUTHORITIES

I. The Jurisprudential Precepts Raised by Petitioner Do Not Require Review by This Court.

Pursuant to Rule 17 of the Rules of the Supreme Court of the United States, only "special and important reasons" will justify review by this Court on writ of certiorari. None of the exemplary reasons listed in Rule 17, or any other reason, would support review of the Kiowa Tribe of Oklahoma's petition for writ of certiorari.

The Tenth Circuit opinion in this case is not in conflict with other federal appellate courts or with any decisions of this Court. To the contrary, the Tenth Circuit applied the substantial body of law regarding finality of judgments and comity in affirming the dismissal of the Kiowa Tribe's action and specifically followed several decisions of this Court.

The Tribe would herald this case as raising issues of national concern and public policy requiring Supreme Court review. This case does indeed involve important public policy: the public's and ultimately Mr. and Mrs. Lewis' and their son Seth's interests in the finality of judgments, the end to litigation, and the preclusive effect federal courts give state court proceedings. While the preclusive effect of final judgments and the comity principles embodied in 28 U.S.C. § 1738 are important and significant matters, their application in this case is clear in view of well settled law. The Kiowa Tribe therefore fails to raise any issues requiring or justifying Supreme Court review.

II. The Kiowa Tribe's Action Was Properly Dismissed When, As a Matter of Law, the Action Is Barred by the Doctrines of Res Judicata and Collateral Estoppel.

A. *Federal courts will give preclusive effect to matters decided by state courts.*

Res judicata and collateral estoppel promote judicial economy and bring a finality to judgments by barring the relitigation of claims or causes of actions that were or could and should have been raised and determined in another action. *See Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981); *Mancuso v. United*

States, 464 F.2d 1273, 1275 (10th Cir. 1972); *Williams v. Evans,* 220 Kan. 394, 396, 552 P.2d 876, 878 (1976).

As recognized by the United States Supreme Court, and by the Tenth Circuit below, the concepts of *res judicata* and collateral estoppel are embodied in the full faith and credit provisions of 28 U.S.C. § 1738. Federal courts must give preclusive effect to matters decided by state courts in order to ensure conclusive adjudications and promote comity. *See Kremer v. Chemical Construction Corp.,* 456 U.S. 461, 466 n.6, *reh'g denied,* 458 U.S. 1138 (1982); *Montana v. United States,* 440 U.S. 147, 153, 163 (1979).

The need for conclusive adjudication is particularly clear in child custody or adoption matters. This Court has held that federal courts must give *res judicata* and collateral estoppel effect to state court child custody proceedings to preserve the security and stability that are essential for childhood development.

> The state's interest in finality is unusually strong in child-custody disputes. . . . It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current "home," under the care of his parents or foster parents, especially when such uncertainty is prolonged. *Extended uncertainty would be inevitable in many cases if federal courts had jurisdiction to relitigate state custody decisions.* [*Leham v. Lycoming County Children's Services Agency,* 458 U.S. 502, 513-14 (1982) (Emphasis added.)]

B. *The Kiowa Tribe's action properly was barred by the prior Kansas state court proceedings and was properly dismissed.*

The Kiowa Tribe filed this action in the United States District Court for the District of Kansas in a belated third attempt to challenge the Kansas state courts' denial of the Tribe's claims under the Indian Child Welfare Act. The district court held that the Tribe's action was an impermissible collateral attack on the final judgment of the Kansas Supreme Court and dismissed the Tribe's complaint.

In affirming the district court, the Tenth Circuit held the action was barred by the doctrines of issue and claim preclusion and in view of decisions by the United States Supreme Court. The Tenth Circuit specifically found the case and the Tribe's course of conduct to be similar to that in *Angel v. Bullington*, 330 U.S. 183 (1947). [*Kiowa Tribe of Oklahoma v. Lewis*, 777 F.2d at 592. (Petition for Writ of Certiorari, App. A at App. 9.)] In *Angel*, Bullington appealed a state trial court decision to the state's supreme court. He thereafter filed a suit in federal court on the same claim, appealed to the circuit court of appeals and then to the United States Supreme Court. 330 U.S. at 185.

In *Angel*, this Court held that the federal action was barred by *res judicata*. This Court further held that by appealing the state trial court decision to the state supreme court, the litigant's only proper recourse to pursue his claims further was to seek review by the United States Supreme Court. Even though Bullington did not exercise right to seek such review, he was barred from beginning the suit anew in a new forum. 330 U.S. at 190.

> If a litigant chooses not to continue to assert his rights after an intermediate tribunal has decided against him, he has concluded his litigation as effectively as though he had proceeded through the highest tribunal available to him. [*Id.* at 189.]

See also Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981); *Allen v. McCurry,* 449 U.S. 90, 101 (1980).

As in *Angel,* the Kiowa Tribe is barred by *res judicata* and collateral estoppel to attack collaterally the denial of its motion to intervene in the state court proceedings or to challenge otherwise the now five year old adoption decree. The Sedgwick County District Court found the ICWA inapplicable to the case and the Tribe to be *without any* rights in the adoption proceedings. The Tribe appealed to the Kansas Supreme Court, which affirmed. At that point, as in *Angel,* the Tribe's only recourse was to seek review by the United States Supreme Court or accept the judgment and thereby finally conclude its litigation.

Counsel for the Kiowa Tribe made the conscious, strategic decision not to seek review of the Kansas Supreme Court judgment. The Tribe instead chose to attempt a collateral attack on the judgment in federal court. The district court and the Tenth Circuit properly held that by choosing to pursue the matter through the Kansas state courts, the Tribe's action was barred and the decision of the Kansas Supreme Court entitled to preclusive effect by the federal courts. [*Kiowa Tribe of Oklahoma v. Lewis,* 777 F.2d at 591-92. (Petition for Writ of Certiorari, App. A at App. 8-9.)] *See Cotton v. Federal Land Bank of Columbia,* 676 F.2d 1368 (11th Cir.), *cert. denied,* 459 U.S. 1041 (1982); *United States v. Epstein,* 608 F.2d 1

(D.C. Cir. 1979); *Tomsick v. Jones,* 464 F. Supp. 371 (D. Colo. 1979).

C. *The judgment of the Kansas Supreme Court is valid.*

The Kiowa Tribe contends the Kansas Supreme Court judgment is not entitled to preclusive effect because it is invalid for failing to comply with the ICWA. (*See* Petition for Writ of Certiorari at 25.) The Tenth Circuit held that pursuant to *Kremer v. Chemical Construction Corp.,* 456 U.S. 461, *reh'g denied,* 458 U.S. 1133 (1982), a federal court will only examine whether the minimum procedural due process requirements of the fourteenth amendment have been satisfied to determine if a state court's judgment is so "fundamentally flawed" as to prevent preclusive effect. [*Kiowa Tribe of Oklahoma v. Lewis,* 777 F.2d at 591. (Petition for Writ of Certiorari, App. A at App. 7.)]

Before determining whether the ICWA applied to the facts of this case, the Kansas state courts afforded the Kiowa Tribe complete due process. *First,* once the trial court was advised that the ICWA might apply, the state court proceedings were recessed so that the Kiowa Tribe could be given notice of the proceedings. *Second,* the Tribe was given the opportunity to present its arguments both orally and by brief. The trial court considered these arguments before ruling on the Tribe's motion to intervene and the applicability of the ICWA. After denying the motion and holding the ICWA inapplicable, the court allowed counsel for the Tribe to continue to sit with and advise counsel for the biological father. *Third,* the Tribe was given full opportunity to present its arguments to the Kansas Supreme Court, both by brief and by personal appearance for oral argument.

The Kansas courts provided the Tribe with full due process, greatly exceeding minimal requirements. The Kiowa Tribe was provided with a full and complete opportunity to present its position and the state courts considered these arguments prior to any rulings. Under such circumstances, the state court proceedings cannot be said to be "fundamentally flawed" and are therefore entitled to preclusive effect. [*Kiowa Tribe of Oklahoma v. Lewis*, 777 F.2d at 591. (Petition for Writ of Certiorari, App. A at App. 7.)] *See Allen v. McCurry*, 449 U.S. 90, 95 (1980); *Montana v. United States*, 440 U.S. 147, 164 (1979).

Furthermore, the Kansas Supreme Court properly considered the legislative history of the ICWA and the congressional findings that "an alarmingly high percentage of Indian families are broken up by the *removal*, often unwarranted, of their children *from them* by nontribal public and private agencies . . . ." 25 U.S.C. § 1901(4) (emphasis added). *See also* H.R. Rep. No. 95-1386 at 10-11, 95th Cong., 2d Sess. 8, *reprinted in* [1978] U.S. Code Cong. & Ad. News 7531 at 7532-33.

Thus, the ICWA was enacted against a background of unnecessary or unwarranted removal of Indian children living with their Indian parent(s), extended family, or Indian custodian. Congressional intent to halt unnecessary disruption of Indian children's lives and its attendant destruction of the Indian family, is reflected in the language of the Act. Sections 1902(4) (breakup of Indian families), 1911(a) (Indian child residing on reservation), 1912(d) (breakup of Indian family), 1914 (removal of child from custodian), and 1922 (Indian child residing on reservation) all "reflect the underlying thread that runs throughout the entire Act . . . that the Act is concerned

with the removal of Indian children from an existing Indian family unit and the resultant break-up of the Indian family." *In re Baby Boy L.*, 231 Kan. at 206, 643 P.2d at 175.

The Kansas Supreme Court held that neither the express language nor the purpose of the ICWA applied to the facts of this case. Seth Allan Lewis has not been removed from any Indian family or community. No Indian family was "broken up" by the adoption of Seth because no Indian family ever existed. Seth has always resided with his non-Indian family and, if the Lewises had not adopted him, Seth's biological, non-Indian mother expressly stated she would retain custody. *In re Baby Boy L.*, 231 Kan. at 206-10, 643 P.2d at 175-78.

Other state appellate courts also have held that the ICWA does not necessarily apply when a child has not been a member of an Indian family or community. *See In the Matter of G.L.O.C.*, 668 P.2d 235 (Mont. 1983); *In re Interest of S.A.M.*, 703 S.W.2d 603 (Mo. App. 1986).

III. The ICWA Does Not Create an Exception to 28 U.S.C. § 1738 or Alter the Traditional Rules of Res Judicata and Collateral Estoppel.

The Kiowa Tribe argues that the ICWA is an exception to 28 U.S.C. § 1738 and allows federal courts to relitigate matters conclusively decided by state courts. The Tribe asserts that the ICWA contemplates a federal court may set aside any state court judgment, regardless of stage of proceeding or appeal, due to an alleged insensitivity of state courts to Indian culture. (*See* Petition for Writ of Certiorari at 20-22.)

The Tenth Circuit rejected the Tribe's argument in view of this Court's decision in *Kremer v. Chemical Con-*

struction Corp., 456 U.S. 461, *reh'g denied*, 458 U.S. 1133 (1982). [*Kiowa Tribe of Oklahoma v. Lewis*, 777 F.2d at 592. (Petition for Writ of Certiorari, App. A at 7-8.)]

In *Kremer*, this Court held that 28 U.S.C. § 1738 embodies the concepts of *res judicata* and collateral estoppel and that federal courts consistently have applied these doctrines to matters decided by state courts. 456 U.S. at 466. The Court rejected the argument that Title VII is an exception to 28 U.S.C. § 1738 and held that exception to section 1738 will not be recognized unless a later statute expressly or impliedly creates an exception, under the established rule that two statutes will be read consistently whenever possible. 456 U.S. at 468. Noting that Title VII was enacted to assure equality in employment opportunities and federal courts were given ultimate enforcement responsibility, this Court further held that Title VII, however, did not repeal state employment discrimination laws and because the plaintiff first pursued and appealed his claim in the state courts, his Title VII action was barred. *See also Allen v. McCurry*, 449 U.S. 90 (1980).

The Tenth Circuit applied the rationale of *Kremer* to determine that the ICWA does not create an exception to section 1738 or to the doctrines of issue and claim preclusion for at least three reasons. *First*, the ICWA, like Title VII, does not expressly or impliedly create an exception to section 1738. *Second*, the ICWA does not repeal state adoption and child welfare laws and, in fact, contemplates the continued enforcement of such laws. *Third*, the ICWA does not require that a tribe asserting rights under the Act should pursue state court proceedings through the state's highest court, then abandon further appeal and attempt a collateral attack in federal court. To permit such collateral attacks would undermine the finality

of judgments—which is particularly important in child custody matters—and put state courts and litigants on an untenable "one-way street" where the finality of decisions depends solely upon who prevails. 456 U.S. at 469-70.

The United States District Court for District of Utah reached a similar conclusion in *Navajo Nation v. District Court for Utah County,* 624 F. Supp. 130 (D. Utah 1985). In *Navajo Nation,* the tribe intervened in a state adoption proceeding and moved to transfer the matter to tribal court under the ICWA. The state court denied the motion and subsequently granted the adoption. The tribe appealed to the Utah supreme court and, while that appeal was pending, filed an action in federal district court alleging violation of the ICWA and 42 U.S.C. § 1983.

The district court dismissed the action in view of the state court proceedings. The court recognized that the ICWA is intended to protect Indian culture, but that neither the ICWA nor section 1983 are exceptions to principles of issue and claim preclusion and comity.

> This Court does not sit as an appellate court for state decisions, and declaratory judgment should not be used to re-examine what has been adjudicated in another forum. . . . All parties had full and complete opportunity to be heard in the state court proceedings. It would not be in the interests of judicial economy, federal-state comity or the avoidance of piecemeal and duplicative litigation for this Court to act upon plaintiffs' claims for declaratory relief or the Section 1983 claims. [624 F. Supp. at 135.]

CONCLUSION

The Tenth Circuit properly affirmed the dismissal of the Kiowa Tribe's action as barred by the final, binding decision of the Kansas Supreme Court in *In re Adoption of Baby Boy L.* The Tribe's action is an impermissible attempt to relitigate matters conclusively determined in Kansas state court proceedings.

The Tribe's petition for writ of certiorari represents the fifth year of litigation and sixth court to hear the Tribe and its counsel's seemingly inexhaustible, meritless challenge to the adoption of now five-plus-year-old Seth Allan Lewis. The Tribe and its counsel, in its pursuit of a patently barred action, have acted without thought or heed of the trauma, fear, and heartache that Robert and Diana Lewis have suffered with each new attack on the adoption. This case gives conclusive demonstration of the very reason and need for the doctrine of *res judicata* and collateral estoppel.

Respondents Robert and Diana Lewis respectfully request that this Court bring an end to this litigation and deny the Kiowa Tribe of Oklahoma's Petition for Writ of Certiorari.

Respectfully submitted,

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